

SENATE BILL 727

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Q3

2004 Regular Session  
4r2535  
CF 4r2536

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By: **Senators Ruben, Astle, Conway, Currie, Exum, Forehand, Frosh,  
Giannetti, Gladden, Green, Grosfeld, Hollinger, Jones, Lawlah,  
McFadden, Middleton, Pinsky, Stone, and Teitelbaum**

Introduced and read first time: February 6, 2004

Assigned to: Budget and Taxation

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A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax Reform**

3 FOR the purpose of requiring certain corporations to compute Maryland taxable  
4 income using a certain method; providing that, except as provided by and  
5 subject to regulations of the Comptroller, certain groups of corporations shall file  
6 a combined income tax return reflecting the aggregate income tax liability of all  
7 of the members of the group for certain taxable years; requiring the Comptroller  
8 to adopt certain regulations; requiring the Comptroller to provide a certain  
9 annual report; requiring certain corporations under certain circumstances to  
10 include with an income tax return or otherwise file with the Comptroller a  
11 certain statement; defining certain terms; providing for the application of this  
12 Act; and generally relating to the income tax on corporations.

13 BY adding to

14 Article - Tax - General  
15 Section 10-402.1  
16 Annotated Code of Maryland  
17 (1997 Replacement Volume and 2003 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article - Tax - General  
20 Section 10-804(e)(3) and 10-811  
21 Annotated Code of Maryland  
22 (1997 Replacement Volume and 2003 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
24 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Tax - General**

2 10-402.1.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
4 INDICATED.

5 (2) "TAX HAVEN COUNTRY" MEANS ANDORRA, ANGUILLA, ANTIGUA AND  
6 BARBUDA, ARUBA, THE BAHAMAS, BAHRAIN, BARBADOS, BELIZE, BERMUDA, BRITISH  
7 VIRGIN ISLANDS, CAYMAN ISLANDS, COOK ISLANDS, TURKS AND CAICOS ISLANDS,  
8 DOMINICA, GIBRALTAR, GRENADA, GUERNSEY-SARK-ALDERNEY, ISLE OF MAN,  
9 JERSEY, LIBERIA, LIECHTENSTEIN, LUXEMBURG, MALDIVES, MARSHALL ISLANDS,  
10 MONACO, MONTSERRAT, NAURU, NETHERLANDS ANTILLES, NIUE, PANAMA, SAMOA,  
11 SEYCHELLES, ST. KITTS AND NEVIS, ST. LUCIA, ST. VINCENT AND THE GRENADINES,  
12 TONGA, U.S. VIRGIN ISLANDS, OR VANUATU.

13 (3) "UNITARY GROUP" MEANS AN AFFILIATED GROUP OF  
14 CORPORATIONS:

15 (I) THAT ARE ENGAGED IN A UNITARY BUSINESS; AND

16 (II) MORE THAN 50% OF THE VOTING STOCK OF EACH MEMBER OF  
17 WHICH IS DIRECTLY OR INDIRECTLY OWNED BY:

18 1. A COMMON OWNER OR OWNERS, EITHER CORPORATE OR  
19 NONCORPORATE; OR

20 2. ONE OR MORE MEMBER CORPORATIONS OF THE GROUP.

21 (B) WHETHER OR NOT THE UNITARY GROUP FILES A COMBINED INCOME TAX  
22 RETURN UNDER § 10-811 OF THIS TITLE, A MEMBER OF A UNITARY GROUP SHALL  
23 COMPUTE ITS MARYLAND TAXABLE INCOME USING THE COMBINED REPORTING  
24 METHOD UNDER THIS SECTION.

25 (C) UNDER THE COMBINED REPORTING METHOD, IF A CORPORATION IS A  
26 MEMBER OF A UNITARY GROUP AND IS SUBJECT TO THE MARYLAND INCOME TAX,  
27 THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME THAT IS DERIVED  
28 FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE  
29 STATE SHALL BE DETERMINED AS FOLLOWS:

30 (1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE UNITARY  
31 GROUP, BY COMBINING THE CORPORATION'S INCOME WITH THE INCOME OF OTHER  
32 MEMBERS OF THE UNITARY GROUP, DISREGARDING TRANSACTIONS BETWEEN  
33 MEMBERS OF THE UNITARY GROUP TO ACCURATELY REFLECT THE INCOME OF THE  
34 UNITARY GROUP;

35 (2) DETERMINE THE PART OF THE UNITARY GROUP'S MARYLAND  
36 MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO  
37 TRADE OR BUSINESS CARRIED ON IN THE STATE USING A MARYLAND  
38 APPORTIONMENT FRACTION OF THE UNITARY GROUP, BASED ON NUMERATORS AND

1 DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES FACTORS UNDER § 10-402  
2 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE AMOUNTS ASSOCIATED WITH  
3 THE ACTIVITIES OF THE CORPORATION WITH THE ACTIVITIES OF OTHER MEMBERS  
4 OF THE UNITARY GROUP, DISREGARDING TRANSACTIONS BETWEEN MEMBERS OF  
5 THE UNITARY GROUP TO ACCURATELY REFLECT THE INCOME ALLOCABLE TO  
6 MARYLAND; AND

7 (3) FOR EACH MEMBER OF THE UNITARY GROUP THAT IS SUBJECT TO  
8 THE MARYLAND INCOME TAX, ALLOCATE A PORTION OF THE AMOUNT DETERMINED  
9 UNDER ITEM (2) OF THIS SUBSECTION TO THAT CORPORATION BY MULTIPLYING THE  
10 AMOUNT DETERMINED UNDER ITEM (2) OF THIS SUBSECTION BY A FRACTION:

11 (I) THE NUMERATOR OF WHICH IS THE MARYLAND  
12 APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING THAT  
13 CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE  
14 APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL MEMBERS  
15 OF THE UNITARY GROUP IN THE DENOMINATORS OF THE APPORTIONMENT  
16 FORMULA; AND

17 (II) THE DENOMINATOR OF WHICH IS THE SUM OF THE MARYLAND  
18 APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE UNITARY GROUP THAT ARE  
19 SUBJECT TO THE MARYLAND INCOME TAX.

20 (D) (1) SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER, A  
21 CORPORATION THAT IS PART OF A UNITARY GROUP SHALL DETERMINE ITS INCOME  
22 DERIVED FROM OR ATTRIBUTABLE TO TRADE OR BUSINESS IN THE STATE USING A  
23 MODIFIED WATER'S EDGE METHOD AS DESCRIBED IN THIS SUBSECTION.

24 (2) UNDER THE MODIFIED WATER'S EDGE METHOD, THE UNITARY  
25 GROUP FOR PURPOSES OF THE COMBINED REPORTING METHOD REQUIRED UNDER  
26 THIS SECTION SHALL INCLUDE THE FOLLOWING AFFILIATED ENTITIES ONLY:

27 (I) CORPORATIONS THAT ARE INCORPORATED IN THE UNITED  
28 STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION PURSUANT TO §§ 931 TO  
29 936 OF THE INTERNAL REVENUE CODE;

30 (II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS  
31 DESCRIBED IN §§ 991 TO 994 OF THE INTERNAL REVENUE CODE AND FOREIGN SALES  
32 CORPORATIONS AS DESCRIBED IN §§ 921 TO 927 OF THE INTERNAL REVENUE CODE;

33 (III) ANY CORPORATION, OTHER THAN A BANK, REGARDLESS OF  
34 THE PLACE WHERE IT IS INCORPORATED IF THE AVERAGE OF ITS PROPERTY,  
35 PAYROLL, AND SALES FACTORS WITHIN THE UNITED STATES IS 20% OR MORE;

36 (IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§ 970 TO 972  
37 OF THE INTERNAL REVENUE CODE;

38 (V) A FOREIGN CORPORATION DERIVING GAIN OR LOSS FROM  
39 DISPOSITION OF AN INTEREST IN REAL PROPERTY IN THE UNITED STATES TO THE  
40 EXTENT RECOGNIZED UNDER § 897 OF THE INTERNAL REVENUE CODE;

1 (VI) A CORPORATION THAT IS IN A UNITARY RELATIONSHIP WITH  
2 THE TAXPAYER AND IS INCORPORATED IN A TAX HAVEN COUNTRY; AND

3 (VII) UNDER THE CIRCUMSTANCES AND TO THE EXTENT PROVIDED  
4 BY REGULATIONS THAT THE COMPTROLLER ADOPTS:

5 1. A CORPORATION NOT DESCRIBED IN ITEMS (I) THROUGH  
6 (VII) OF THIS PARAGRAPH, TO THE EXTENT OF ITS INCOME DERIVED FROM OR  
7 ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS FACTORS  
8 ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES, AS DETERMINED BY  
9 REGULATIONS THAT THE COMPTROLLER ADOPTS; OR

10 2. AN AFFILIATED CORPORATION THAT IS A CONTROLLED  
11 FOREIGN CORPORATION, AS DEFINED IN § 957 OF THE INTERNAL REVENUE CODE.

12 (3) THE USE OF THE MODIFIED WATER'S EDGE METHOD IS SUBJECT TO  
13 THE TERMS AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION,  
14 INCLUDING ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO PREVENT  
15 THE AVOIDANCE OF TAX OR TO CLEARLY REFLECT INCOME FOR ANY PERIOD.

16 (E) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE  
17 NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.

18 (2) (I) ON OR BEFORE DECEMBER 15 OF EACH YEAR, THE  
19 COMPTROLLER SHALL PROVIDE TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF  
20 THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY:

21 1. A REPORT UPDATING THE LIST OF COUNTRIES THAT THE  
22 COMPTROLLER HAS DETERMINED SHOULD BE SHOULD BE CONSIDERED TAX HAVEN  
23 COUNTRIES FOR PURPOSES OF THIS SECTION; AND

24 2. A DRAFT OF LEGISLATION TO AMEND THE DEFINITION OF  
25 "TAX HAVEN COUNTRY" UNDER THIS SECTION TO REFLECT THE COMPTROLLER'S  
26 DETERMINATION MADE UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH.

27 (II) FOR PURPOSES OF DETERMINING WHICH COUNTRIES SHOULD  
28 BE CONSIDERED TAX HAVEN COUNTRIES FOR PURPOSES OF THIS SECTION, THE  
29 COMPTROLLER SHALL CONSIDER THE EXTENT TO WHICH EACH JURISDICTION  
30 PROVIDES TAX SHELTERING OPPORTUNITIES FOR CORPORATIONS INCORPORATED  
31 OR EARNING INCOME IN THE UNITED STATES EITHER DIRECTLY OR THROUGH THE  
32 USE OF RELATED FOREIGN CORPORATIONS.

33 10-804.

34 (e) Each person required under this subtitle to file an income tax return or  
35 estimated income tax declaration or return shall:

36 (3) attach to an income tax return or otherwise file with the Comptroller  
37 any records or statements that the Comptroller requires, including:

1 (i) for an individual who has income tax withheld from salary,  
2 wages, or other compensation for personal services, or other payments, a copy of the  
3 statement from the person who withholds the tax that states:

4 1. the amount of salary, wages, or other compensation for  
5 personal services paid and the income tax withheld; or

6 2. the amount of payments made and the income tax  
7 withheld; [and]

8 (ii) a copy of the federal income tax return:

9 1. for a corporation; and

10 2. if the Comptroller requests, for an individual; AND

11 (III) IF THE COMPTROLLER REQUESTS, FOR A CORPORATION THAT  
12 IS A MEMBER OF AN AFFILIATED GROUP OR A CONTROLLED GROUP UNDER § 1504 OR  
13 § 1563 OF THE INTERNAL REVENUE CODE:

14 1. A STATEMENT OF ALL INTERMEMBER COSTS OR  
15 EXPENSES AND ALL INTERMEMBER SALES, EXCHANGES, OR OTHER TRANSACTIONS  
16 INVOLVING TANGIBLE OR INTANGIBLE PROPERTY FOR THE TAXABLE YEAR; AND

17 2. FOR EACH MEMBER OF THE AFFILIATED GROUP OR  
18 CONTROLLED GROUP, A STATEMENT OF THE INCOME REPORTED TO EACH STATE  
19 AND EACH TAX HAVEN JURISDICTION AS DEFINED IN § 10-402.1 OF THIS TITLE, THE  
20 TAX LIABILITY FOR EACH STATE AND EACH TAX HAVEN COUNTRY, AND THE METHOD  
21 USED FOR ALLOCATING OR APPORTIONING INCOME TO THE STATES AND THE TAX  
22 HAVEN COUNTRIES.

23 10-811.

24 (A) [Each member of] EXCEPT AS PROVIDED BY AND SUBJECT TO  
25 REGULATIONS ADOPTED BY THE COMPTROLLER, an affiliated group of corporations  
26 [shall file a separate income tax return] ENGAGED IN A UNITARY BUSINESS SHALL  
27 FILE A COMBINED INCOME TAX RETURN REFLECTING THE AGGREGATE INCOME TAX  
28 LIABILITY OF ALL OF THE MEMBERS OF THE AFFILIATED GROUP THAT ARE  
29 ENGAGED IN A UNITARY BUSINESS.

30 (B) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE NECESSARY  
31 OR APPROPRIATE TO CARRY OUT THIS SECTION.

32 SECTION 2. AND BE IT FURTHER ENACTED, That, except as otherwise  
33 provided in this section, this Act shall take effect June 1, 2004, and shall be applicable  
34 to all taxable years beginning after December 31, 2003.